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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206746

DATE: April 5, 1982

MATTER OF: X-Cel Constructors, Inc.

DIGEST:

Protest against rejection of low bid is denied summarily where protester admits that its bid was rejected for failure to acknowledge receipt of amendment containing wage determination. Such omission is not a minor informality or irregularity which can be waived.

X-Cel Constructors, Inc. (X-Cel), protests rejection of its bid under solicitation No. DTCG26-82-B-00416 issued by the Coast Guard.

Apparently, X-Cel's bid was found nonresponsive because it failed to acknowledge receipt of an amendment providing a new wage determination. X-Cel contends it submitted an acknowledgment timely and takes issue with the Coast Guard's determination. The Coast Guard advised X-Cel it had no record of receipt of the amendment and X-Cel concedes it cannot prove that the acknowledgment was received by the Coast Guard. However, the protester references solicitation language, which advises that failure to acknowledge an amendment may result in rejection of the bid, and asserts, in essence, that the amendment was not material, and that the failure to acknowledge should have been waived as a minor informality since X-Cel's bid was low by \$50,000.

We deny the protest summarily.

It is well settled that failure to acknowledge an amendment in an advertised procurement renders a bid non-responsive and that, where the substance of the amendment concerns a wage rate determination, failure to acknowledge the amendment cannot be waived as a minor informality or irregularity. This is because, absent acknowledgment, the bidder legally could not be required by the Government

to pay the wages prescribed in the amendment even though it may already be paying the same or a higher rate under a union contract. Air Services Company, B-204532, September 22, 1981, 81-2 CPD 240.

Since the protester's initial submission affirmatively demonstrates that the protest is without legal merit, we have decided the protest without requesting an agency report. Wilderness Research Institute, Inc., B-203326, June 19, 1981, 81-1 CPD 512.

for *Milton J. Fowler*
Comptroller General
of the United States